IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.201 OF 1985

Central Bank of India ..Plaintiffs

Vs.

Allied Finance P.Ltd.and Ors. ..Defendants

Mr.A.Joshi i/b M/s.Mulla & Mulla & Cragie Blunt and Caroe for the plaintiffs

None for the defendants

CORAM : S.U.KAMDAR, J

DATED : 19TH JULY 2005

P.C.:

1. The present suit is filed for the recovery of sum of Rs.66,947.85 due and payable under Cash Credit Hypothecation Facility advanced by the defendants with further interest @ 18% p.a. with quarterly rest from the date of payment till payment and / or realisation. Some of the material facts of the present case are briefly stated are as under:

2. Some time in or about 16.9.76 defendant

no.1 made a request to the plaintiff for sanction in their favour what is known as Cash Credit (Hypothecation) facility to the extent of Rs.5.0 lacs. As against the said facility they agreed to hypothecate the stocks of Silicone Diodes Silicone Controlled Rectifiers, Plates, Stocks of maniatures, raw materials Rectifiers, plates, stocks and other raw material and deed of hypothecation was executed on 26.9.76. Defendant also executed various other documents such as Demand Promissory Note dt.28.11.79, Letter of Continuity dt.28.11.79, Letter of Interest Confirmation also dt.28.11.79 and Letter of Balance Confirmation at the foot of account as due and payable by the defendants to the plaintiffs dt.3.3.79. Pursuant to the said facility, the said amount was disbursed. However, defendants did not repay the amount as due and payable from time to time by way of instalment. Ultimately, in July 1978, the facility was reduced to the extent of only Rs.3.0 lacs and due to unsatisfactory financial position, defendants committed various breach of instalments of amount due and payable by the defendants to the plaintiffs herein.

Ultimately, at the foot of the account, outstanding amount inclusive of interest Rs.1,57,393.82. Defendants failed and neglected to make payment and accordingly defendants notice dt.4.1.84 was issued for recovery of said amount and in view of non-payment suit is filed for recovery of Rs.66,947.88 alongwith further interest @ 18% p.a. from the date of the suit till payment.

3. Plaintiffs have tendered xerox copies of documents in pursuance of order passed on 8.6.05. Plaintiffs have also tendered affidavit of evidence of one Mr.Hemraj Satpute. In the written statement which has been filed by the defendant substantial claim is admitted except interest in para 2 and 3. In para 4 it has been contended that the said hypothecation was converted into pledge when the custody of the goods were actually handed over to the plaintiffs and since then the said goods are lying with the plaintiffs. No other defences are raised on merits by the defendants. In so far as hypothecated goods are concerned, the said goods were sold in pursuance to the interim order passed by this court. The amount of Rs.10,427/- is

recovered by the plaintiff on 3.10.89. Plaintiffs are directed to give credit for the said amount and the plaintiffs will be entitled to decree for the balance amount. Decree is passed in favour of the plaintiffs and against the defendants. There shall be decree for the sum of Rs.66,947.88 after adjusting claim of Rs.10,427/- being the goods sold pursuant to the interim order passed. The plaintiffs will be entitled to interest @ 18% on the balance amount after giving credit. Suit disposed of accordingly. No order as to costs.